

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THE THOMPSONS FILM, LLC,

Plaintiff,

v.

DOES 1 – 194,

Defendants.

Case No.: 2:13-CV-560-RSL

DECLARATION OF COUNSEL IN SUPPORT OF  
PLAINTIFF'S RESPONSE TO ORDER TO  
SHOW CAUSE AND QUASHING  
SUBPOENAS

I, Maureen C. VanderMay, submit the following declaration:

1. I am counsel of record for Plaintiff in the above-entitled matter.
2. I make this declaration in support of Plaintiff's Response to Order to Show Cause and Quashing Subpoenas. My statements are true to the best of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.
3. The Court's order granting leave for preliminary discovery was served upon me electronically on April 1, 2013. Upon receipt, I started working with our staff to research how to effect personal service on the ten internet service providers ("ISPs") identified on Exhibit 1 to

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1 Plaintiff's complaint. We had the requisite information for some of the ISPs from our work in  
2 another action but other ISPs required time consuming research as we had to review various  
3 materials to determine the legal names of the ISPs at issue. This research was necessary so that  
4 we could ensure that we served the correct entity through its registered agent. We also  
5 researched whether the ISPs at issue required the submission of IP addresses in any particular  
6 format and whether they wanted some form of follow up submission in addition to personal  
7 service. This research consisted of online searches and follow up telephone calls and/or emails  
8 to various ISPs.

9 4. Once we had the information necessary to properly effect service on each ISP, we  
10 prepared the subpoenas, cover letters, attachments where required, and made copies of the  
11 Court's order allowing preliminary discovery. This was a fairly time consuming process because  
12 of the need to ensure that the 194 IP addresses listed on Exhibit 1 to the Complaint were each  
13 transferred to the subpoena for the appropriate ISP.

14 5. Once the nine subpoena packets that needed to be personally served in Washington were  
15 finalized, we forwarded them to our process server in Olympia, Washington via overnight  
16 delivery on April 9, 2013. She personally served all of the subpoenas on April 12, 2013.

17 6. We were unable to identify an agent for service in Washington for one ISP, Nobis  
18 Technology Group, LLC. I contacted Nobis through its website and was informed that it does  
19 not maintain an agent for service of process in Washington. Nobis requested that we effect  
20 personal service on its offices in Phoenix, Arizona. I directed our staff to locate a process server  
21 in Phoenix and we forwarded the subpoena and related materials to him on April 15, 2013.  
22 Service was effected on Nobis on April 17, 2013.

23 7. I was personally involved in the above-described researching of the ISPs and the  
24 preparation of the subpoenas and can assure the Court that we worked diligently on this from the  
25 receipt of the Court's order on April 1<sup>st</sup> until the packets were sent to our process servers,

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1 including working on them over the intervening weekend.

2 8 Shortly after service of the subpoenas was effected, one of the ISPs, Comcast, requested  
3 an extension of the compliance date due to its workload and expected processing times. It sought  
4 an extension from May 24, 2013, to June 12, 2013. Upon receipt of this request, I inquired as to  
5 the reason for an extension of this length and expressed concern that such an extension would  
6 delay our naming the Doe Defendants who downloaded Plaintiff's film through a Comcast IP  
7 address. I asked if a shorter extension would be workable for Comcast. Comcast's response  
8 came from a supervisor who said that in light of the timing of the notices being sent to the  
9 affected subscribers, in order to comply with the terms of the Court's order the soonest that  
10 Comcast could comply with the subpoena was June 12, 2013. In light of this representation, I  
11 agreed to the requested extension.

12 9. During the thirty day notice period set forth in the Court's April 1<sup>st</sup> order during which  
13 subscriber information was not to be produced, one ISP, Integra Telecom, forwarded to  
14 Plaintiff's counsel subscriber information via email. Upon seeing that the response contained  
15 subscriber information, I immediately drafted a letter that was sent via email to this ISP  
16 referencing the notice period set forth in the Court's order, enclosing another copy of said order,  
17 requesting that the response be re-submitted to us at a later time in compliance with the Court's  
18 order, and representing that we would disregard and take no action whatsoever concerning the  
19 subscriber pending the re-submission of this information from the ISP. Attached hereto as  
20 Exhibit 1 is a true and correct copy of this letter.

21 10. We also received a notice regarding our subpoena to FairPoint Communications which  
22 suggested that subscriber information might be forwarded before the compliance date set forth in  
23 the subpoena. I forwarded a letter to this ISP's agent pointing out the time limitations set forth in  
24 the Court's April 1<sup>st</sup> order and asking that information not be provided earlier than the  
25 compliance date so as to ensure compliance with the Court's directives. Attached as Exhibit 2 is

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1 a true and correct copy of this letter.

2 11. Pursuant to the Court's directive that we immediately notify the ISPs upon which  
3 subpoenas had been served that they are not obligated to respond to these subpoenas, we began  
4 sending such notices upon my initial review of the Court's OSC on May 13, 2013. We  
5 completed this process on May 14, 2013. We reviewed the information we had on each ISP and  
6 forwarded notice by the fastest method available to us, using email where we had email addresses  
7 for our contact persons, facsimile where we had no email address and U.S. Mail where we had  
8 neither an email address nor a facsimile number.

9 12. The Court's OSC expresses concern that this action may be intended to employ the  
10 judicial authority of the United States "to wrest improvident settlements from pro se litigants  
11 under threat of huge statutory penalties." Court's OSC at 2. I submit that the allegations set  
12 forth in Plaintiff's complaint and its conduct of this litigation to date demonstrate that this is not  
13 the case. In light of the manner in which some BitTorrent litigation has been conducted by other  
14 Plaintiffs and other counsel before various U.S. District Courts across the United States, Plaintiff  
15 is cognizant of the bases for the Court's concern. However, with all due respect and without  
16 intending in any way to discount the Court's concern, for the reasons set forth *infra* Plaintiff  
17 submits that its ability to pursue its legitimate claims of copyright infringement should not be  
18 undermined by the misconduct of others.

19 13. As Plaintiff's complaint sets forth, Plaintiff is the owner of the copyright for the motion  
20 picture entitled *The Thompsons*. Unlike the motion pictures at issue in some other litigation, *The*  
21 *Thompsons* is not a work that was produced solely for posting online so as to create claims for  
22 infringement, nor does it have pornographic content. Rather, it is a sequel to the award winning  
23 independent film, *The Hamiltons*, which is intended for a mainstream audience. Plaintiff is the  
24 author of this work and by filing this action it is seeking to protect the significant financial  
25 investment it made in its production. Plaintiff submits that nothing in its conduct nor in the

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1 correct copy of these materials.

2 **I hereby declare that the above statement is true to the best of my knowledge and**  
3 **belief, and that I understand it is made for use as evidence in court and is subject to penalty**  
4 **for perjury.**

5 DATED: May 23, 2013

6 Respectfully submitted,

7 The VanderMay Law Firm

8 /s/ Maureen C. VanderMay

9 Maureen C. VanderMay, WSBA No. 16742

10 email: thethompsonswa@vandermaylawfirm.com

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15 Of Attorneys for Plaintiff

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